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Lori A. Winfree

May 2, 2013

Mr. Tom Karlo
General Manager, KPBS
5200 Campanile Drive
San Diego, CA 92182

Dear Mr. Karlo,

I am writing you to once again request that KPBS correct ongoing and additional factual errors contained in a series of news reports by investigative reporter Brad Racino of your news partnering agency, Investigative News Source.

Specifically, NCTD requests the following corrections:

1. April 3, 2013- "SPRINTER Funds Used for Buses—and Studies"

In this article, Mr. Racino suggests that money was wrongfully diverted to pay for studies and accuses NCTD of "violating accounting principles." We have provided several factual sources of information to KPBS that proves this statement to be incorrect, including:

- The Federal Transit Administration (FTA 5307 funding guidelines, go to: http://www.fta.dot.gov/grants/13093_3561.html). These guidelines allow for funding for preliminary design and planning for those CIP projects that result in a capital asset when completed. I refer you to the first section under eligibility that reads: "Eligible Activities- Eligible activities include planning, engineering design and evaluation of transit projects and other technical transportation-related studies..."
- I have included as an attachment to this communication, a letter from NCTD's independent auditor, Pun & McGeadey, indicating that studies undertaken by NCTD are properly accounted for as operating expenditures, not capital expenditures in FY 2012 and FY 2011.
- During a May 1, 2013 interview Mr. Racino conducted with various NCTD managers, Mr. Tucker and Mr. Ryan Bailey, NCTD CFO, explained the difference between NCTD's list of projects to be funded in our annual budget documents under the heading of CIP, and the accounting treatment for such projects in the Comprehensive Annual Financial Report (CAFR). Contrary to the allegation of wrong doing by Mr. Racino on behalf of KPBS, NCTD properly accounts for FTA eligible studies and planning projects as operating expenses rather than capital projects. This interview was recorded by Mr. Racino and NCTD. We are able to provide the full recording where this explanation was provided, should Mr. Racino's recording be unavailable.

The projects KPBS listed as being improperly treated are clearly properly accounted for. The implication by KPBS that NCTD is not following generally accepted accounting principles (GAAP) set by the Government Accounting Standards Board (GASB) is false. NCTD requests a retraction of this allegation and a public statement of the error in facts by KPBS.

2. May 2, 2013- "North County Rail and Bus Service Suffers without Contract Oversight"

This article incorrectly states:

"During his outsourcing, Tucker contracted out the maintenance of the SPRINTER vehicles to a private company, which then subcontracted out to another private company."

- These contracts were authorized by the NCTD Board and entered into prior to Mr. Tucker being employed by the District in December 2008. The contract was entered into on May 8, 2006, and was executed by Karen King, Executive Director and Michael Cowett, General Counsel.

NCTD requests that this incorrect information be identified as an error to the public and corrected.

3. May 2, 2013- "Transit Agency's Revolving Door Costs Big, Causes Turmoil"

The chart entitled, ' Recruiting fees paid by NCTD' is incorrect in the following instances:

- Johnny Dunning- As we stated in the May 1, 2013, interview with Mr. Racino, Mr. Dunning was an ancillary hire out of the one search for a Chief Operating Officer, Lane Fernandes. We did not pay any fees for hiring Mr. Dunning. We did not pay any additional fees for hiring the replacement for Mr. Fernandes.
- Laynie Weaver- was hired by NCTD as a result of an independent response by Ms. Weaver to a standard recruitment conducted by our human resources department. She is the Transit Safety and Emergency Preparedness Manager. NCTD did not pay any fees, nor was KL Executive Search involved.

NCTD requests that this incorrect information be identified as an error to the public and corrected.

I have attached the Society of Professional Journalists Code of Ethics (Code), the basis for our requesting that KPBS correct the numerous reporting errors in this series of articles. To quote the Code,

"Journalists are accountable to their readers, listeners, viewers and each other. Journalists should...

- Clarify and explain news coverage and invite dialogue with the public over journalistic conduct.
- Admit mistakes and correct them promptly.
- Expose unethical practices of journalists and the news media.
- Abide by the same high standards to which they hold others."

NCTD is asking KPBS to uphold the journalistic standards the public and the profession demands and publicly correct the record. Anything less than accountability is to acknowledge that ethical decision making is absent from the KPBS newsroom. I ask you to correct the record as soon as possible.

I can be reached at 760-967-2817 and dcastillo@nctd.org.

Sincerely,



Deborah Castillo
Manager of Marketing and Communications

cc: Matthew O. Tucker, Executive Director, NCTD
Bill Horn, Supervisor County of San Diego, NCTD Chairman of the Board
NCTD Board Members
Elliot Hirshman, President, SDSU

Attachments:

Pun & McGeadey letter of April 26, 2013
Capital Improvement Program (CIP) and Accounting Practices: NCTD in the News
SPJ Code of Ethics



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April 26, 2013

Board of Directors
North County Transit District
810 Mission Avenue
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We were engaged by the North County Transit District ("NCTD") to provide professional auditing services for the year ended June 30, 2012 and our predecessor firm, Caporicci & Larson, was engaged by NCTD to provide professional audit services for the year ended June 30, 2011.

A Single Audit is required under OMB Circular A-133, *Audits of States, Local governments, and Not-for-Profit Organizations*, when a recipient has expended federal awards of \$500,000 or more during the recipient's fiscal year.

For the years ended June 30, 2012 and 2011, the total expenditures of federal awards amounted to \$20,386,976 and \$32,115,598, respectively, were expended and are reported in the Schedule of Expenditures of Federal Awards. We selected four (4) major programs totaling \$20,010,000 for 2012 and three (3) major programs totaling \$31,744,882 for 2011 in accordance with OMB Circular A-133 for compliance testing purposes.

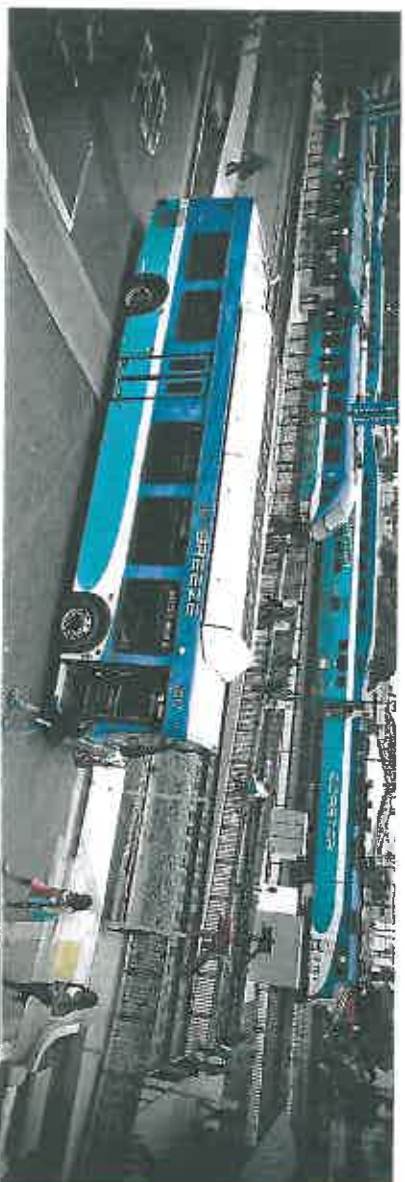
One project study related to Camp Pendleton, funded by U.S. Department of Transportation with grant numbers CA-90-Y632 and CA-90-Y874, was part of the Federal Transit Cluster totaling \$17,309,042 and was reported in 2012 Schedule of Expenditures of Federal Awards. During the fiscal year ended June 30, 2012, total expenditures of federal awards for these two grants was \$6,562,831, of which we tested \$5,433,073 or 82.79% in our procedures. The study related to Camp Pendleton accounted for expenditures of \$21,409 in fiscal year 2012. These expenditures related to this study were properly accounted for as operating expenditures. For the fiscal year ended June 30, 2011, there were no expenditures related to this study.

Should you have any questions, please do not hesitate to contact me at (949) 777-8800. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'K.H. Pun', is written over a horizontal line.

Kenneth H. Pun, CPA, CGMA
Engagement Partner



**RELATED TO
AGENDA ITEM W2**

NORTH COUNTY
TRANSIT DISTRICT

Capital Improvement Program (CIP) and Accounting Practices: NCTD in the News

May 2, 2013

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Recent Press on NCTD

- Recent media reports have stated or implied various inaccuracies that have led to misconceptions about NCTD.
 - Implied that SPRINTER funds were diverted
 - Stated that NCTD was misclassifying operating expenses as capital expenses

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Media Report Suggesting NCTD Diverted SPRINTER Funds

- “Money that was budgeted to fix the brakes and pay for other maintenance on North County Transit District’s SPRINTER was instead used to pay for buses and transit studies.” (KPBS)
- This refers to the SPRINTER vehicle drive system overhaul project presented in the outer years of the FY 2012-2016 CIP budget. The article implied that the SPRINTER shutdown was related to this project.

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Vehicle Drive System Overhaul

- No relationship exists between **SPRINTER** shutdown and drive system overhaul project.
- Irregular wear pattern of rotors leading to **SPRINTER** shutdown is isolated to center trucks.
 - Assuming even wear since 2008, the original solid disc rotor should have been replaced approximately 2 to 3 years ago, well ahead of the need to overhaul the drive system.
- The drive system overhaul specified by the vehicle manufacturer assumed consistent wear of all key components related to the two power trucks located on the ends of the vehicles and the center truck.
 - The center truck rotors experience abnormal and premature wear, while the two power trucks are performing consistent with vehicle manufacturer assumptions.

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CIP Budget Process

- Only current year is funded in CIP.
- Future years presented are dependent upon actual funding availability by funding agencies and are not funded until proposed and approved by the Board in that current year.

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Vehicle Drive System Overhaul: CIP Budget

- Presented in FY 2012 CIP under years FY 2013-2016, which is not funded with the adoption of the FY 2012 CIP budget.
- No funding was allocated to SPRINTER vehicle drive system overhaul project; thus, funding could not be diverted.
- The failure of the Project Manager to propose the project in FY 2013 for funding was addressed by a requirement from Executive to retain a consulting firm to update the SPRINTER fleet management plan. Work began in fall 2012.

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FY 2013 – Other Projects

- **FY 2013 CIP involved evaluation of all projects deemed necessary by project managers, which included these projects:**
 - Buses – FY 2012 through FY 2013
procurements funded in majority by one-time federal discretionary grant award combined with existing funding identified for buses. Fixed-route service accounts for 65% of NCTD boardings.
 - Transit Studies – Project studies programmed in the CIP to be accounted for in the operating budget.

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KPBS Clarification Related to Article, “SPRINTER Funds Used For Buses — And Studies”

- In response to April 3 article, NCTD sent a detailed letter on April 5 rebutting implications that funds were diverted and providing information about NCTD’s financial health.
- On April 16, KPBS responded to NCTD:
 - “In your letter to Mr. Karlo, we also did not accuse NCTD of diverting maintenance dollars away from the SPRINTER thereby *causing* the shutdown. We said money was planned for the SPRINTER one year, and gone from the budget the next. Some of that money was replaced with studies, which is true. It is also true that SPRINTER money would have replaced the brakes, as per the definition of SPRINTER Vehicle drive System Overhaul in the agency’s current CIP draft.”

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Conclusions Related to Media Report Suggesting NCTD Diverted SPRINTER Funds

- **The SPRINTER shutdown has no relationship to the drive system overhaul project.**
- **NCTD has the financial capacity to meet its operating and capital needs.**
- **Media reports containing disparate information guided readers to reaching false assumptions and/or conclusions.**

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Media Report of Accounting Standards Deviations

- “The budget documents...raise questions about why maintenance expenses were scratched and studies were inserted among ‘capital improvement’ items.” (KPBS)
- “This type of accounting raises questions about transparency and accountability, and could be seen as a way of burying expenses in the less-scrutinized capital budget in order to present a more balanced operating budget to the public.” (KPBS)

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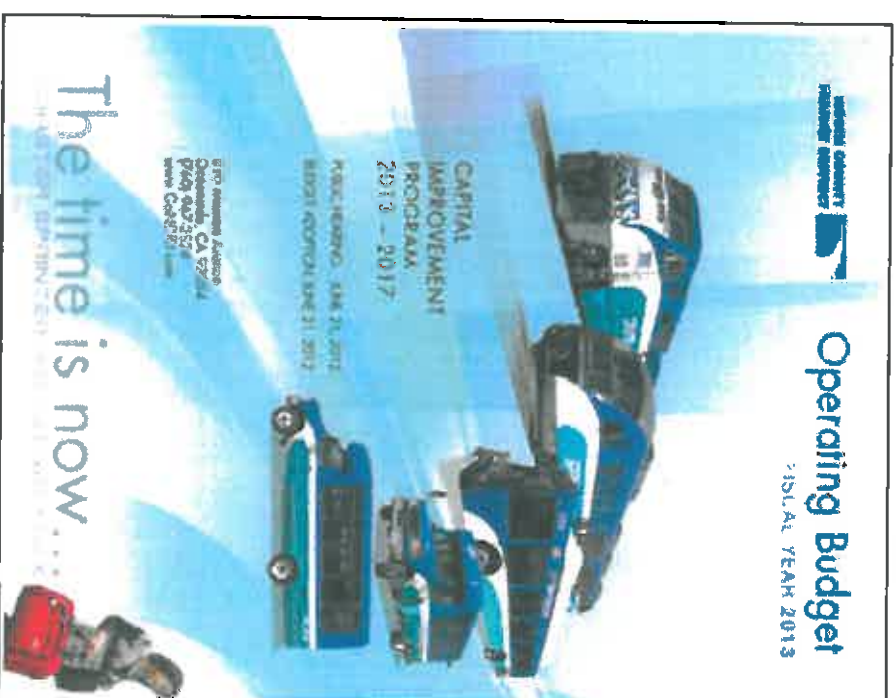
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NCTD Reporting

FY 2012 CAFR



FY 2013 Budget



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Project Accounting

- CIP budgeting process is a call for all projects rather than just capital projects.
- Actual project expenditures are classified as either operating or capital, consistent with accounting standards.
 - The CAFR – not the Budget – captures the actual classification of expenditures
- Within NCTD's accounting system, capital projects are assigned a six-digit project number starting with “1” to “7,” while operating projects are assigned a six-digit project number starting with “8”.

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FY 2013 Studies

Classified as Operating Expenses

Project Description	Project No.	Amount Requested	Actual Cost	Status
20 Year Plan-Facility Condition Assessment	813257	150,000	735	Pending Procurement
Public Benefit Study	N/A	150,000	-	Cancelled
Critical Systems Study	N/A	50,000	-	Cancelled
Document Mgmt Study	813001	100,000	47,585	Completed with SC&H
Bus Stop Rationalization	813255	63,000	-	Pending Procurement
Capital Facility Planning	813250	250,000	39,912	Contract with Gobis & Company
DMU Study	813050	-	351	Pending Procurement
Platform Study	813200	-	17,223	Contract with HNTB
Head End Study	813201	-	68,718	Contract with HNTB
Threat and Vuln. Assessment	813251	-	-	Pending Procurement
Sorrento Vly. Rd Amtrak Study	813252	-	353	Pending Procurement
DBE Disparity Study	813254	-	-	Pending Procurement
ROW Esthetics	813258	-	-	Pending Procurement

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FY 2013 GAO Study/Project

- **General Administrative Office (GAO) improvements (AECOM)**
 - Assessment, design, and construction management
 - Total cost: \$134,744
 - AECOM part of SANDAG on-call contract assignment
 - Authorized to proceed with assessment, Phase I, totaling approximately \$35,000. This portion of project will be accounted for in operating budget, and subsequent phases will be capital to support imminent construction activity.

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Conclusions Related to Media Report of Accounting Standards Deviations

- **Actual project expenditures are classified as either operating or capital consistent with accounting standards.**
 - The CAFR – not the Budget – captures actual classification of expenditures.
- **A review of NCTD's FY 2013 budget shows that studies are appropriately being charged.**
- **NCTD has asked its auditor, Pun & McGeady, to review NCTD's FY 2012 and FY 2011 expenditures related to studies.**
 - Pun & McGeady affirmed that NCTD appropriately classified these expenses.

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FY 2012 and 2011 Studies

- **Independent auditors' assessment from Single Audit Report engagement:**
 - “The study related to Camp Pendleton accounted for expenditures of \$21,409 in fiscal year 2012. These expenditures related to this study were properly accounted for as operating expenditures. For the fiscal year ended June 30, 2011, there were no expenditures related to this study.” (Kenneth H. Pun, Engagement Partner)

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Key Conclusions

- **SPRINTER shutdown is not related to any financial or accounting issue.**
- **There is no explicable reason that NCTD would need to divert funds or misclassify expenses.**
 - Study expenses are too small to significantly impact fare box or operating recovery.
- **NCTD's operating budget is projected balanced for the next 5 years.**
 - FY 2013 included an unallocated contingency of \$5.5 million.
- **NCTD's FY 2013 capital budget was \$26.3 million, and proposed FY 2014 is \$27.4 million. The 2-year average exceeds the Board goal of \$15.0 million annually by \$11.9 million.**

Questions/Comments

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Code of Ethics

PREAMBLE

Members of the Society of Professional Journalists believe that public enlightenment is the forerunner of justice and the foundation of democracy. The duty of the journalist is to further those ends by seeking truth and providing a fair and comprehensive account of events and issues. Conscientious journalists from all media and specialties strive to serve the public with thoroughness and honesty. Professional integrity is the cornerstone of a journalist's credibility. Members of the Society share a dedication to ethical behavior and adopt this code to declare the Society's principles and standards of practice.

SEEK TRUTH AND REPORT IT

Journalists should be honest, fair and courageous in gathering, reporting and interpreting information.

Journalists should:

- ▶ Test the accuracy of information from all sources and exercise care to avoid inadvertent error. Deliberate distortion is never permissible.
- ▶ Diligently seek out subjects of news stories to give them the opportunity to respond to allegations of wrongdoing.
- ▶ Identify sources whenever feasible. The public is entitled to as much information as possible on sources' reliability.
- ▶ Always question sources' motives before promising anonymity. Clarify conditions attached to any promise made in exchange for information. Keep promises.
- ▶ Make certain that headlines, news teases and promotional material, photos, video, audio, graphics, sound bites and quotations do not misrepresent. They should not oversimplify or highlight incidents out of context.
- ▶ Never distort the content of news photos or video. Image enhancement for technical clarity is always permissible. Label montages and photo illustrations.
- ▶ Avoid misleading re-enactments or staged news events. If re-enactment is necessary to tell a story, label it.
- ▶ Avoid undercover or other surreptitious methods of gathering information except when traditional open methods will not yield information vital to the public. Use of such methods should be explained as part of the story.
- ▶ Never plagiarize.
- ▶ Tell the story of the diversity and magnitude of the human experience boldly, even when it is unpopular to do so.
- ▶ Examine their own cultural values and avoid imposing those values on others.
- ▶ Avoid stereotyping by race, gender, age, religion, ethnicity, geography, sexual orientation, disability, physical appearance or social status.
- ▶ Support the open exchange of views, even views they find repugnant.
- ▶ Give voice to the voiceless; official and unofficial sources of information can be equally valid.
- ▶ Distinguish between advocacy and news reporting. Analysis and commentary should be labeled and not misrepresent fact or context.
- ▶ Distinguish news from advertising and shun hybrids that blur the lines between the two.
- ▶ Recognize a special obligation to ensure that the public's business is conducted in the open and that government records are open to inspection.

MINIMIZE HARM

Ethical journalists treat sources, subjects and colleagues as human beings deserving of respect.

Journalists should:

- ▶ Show compassion for those who may be affected adversely by news coverage. Use special sensitivity when dealing with children and inexperienced sources or subjects.
- ▶ Be sensitive when seeking or using interviews or photographs of those affected by tragedy or grief.
- ▶ Recognize that gathering and reporting information may cause harm or discomfort. Pursuit of the news is not a license for arrogance.
- ▶ Recognize that private people have a greater right to control information about themselves than do public officials and others who seek power, influence or attention. Only an overriding public need can justify intrusion into anyone's privacy.
- ▶ Show good taste. Avoid pandering to lurid curiosity.
- ▶ Be cautious about identifying juvenile suspects or victims of sex crimes.
- ▶ Be judicious about naming criminal suspects before the formal filing of charges.
- ▶ Balance a criminal suspect's fair trial rights with the public's right to be informed.

ACT INDEPENDENTLY

Journalists should be free of obligation to any interest other than the public's right to know.

Journalists should:

- ▶ Avoid conflicts of interest, real or perceived.
- ▶ Remain free of associations and activities that may compromise integrity or damage credibility.
- ▶ Refuse gifts, favors, fees, free travel and special treatment, and shun secondary employment, political involvement, public office and service in community organizations if they compromise journalistic integrity.
- ▶ Disclose unavoidable conflicts.
- ▶ Be vigilant and courageous about holding those with power accountable.
- ▶ Deny favored treatment to advertisers and special interests and resist their pressure to influence news coverage.
- ▶ Be wary of sources offering information for favors or money; avoid bidding for news.

BE ACCOUNTABLE

Journalists are accountable to their readers, listeners, viewers and each other.

Journalists should:

- ▶ Clarify and explain news coverage and invite dialogue with the public over journalistic conduct.
- ▶ Encourage the public to voice grievances against the news media.
- ▶ Admit mistakes and correct them promptly.
- ▶ Expose unethical practices of journalists and the news media.
- ▶ Abide by the same high standards to which they hold others.

The SPJ Code of Ethics is voluntarily embraced by thousands of journalists, regardless of place or platform, and is widely used in newsrooms and classrooms as a guide for ethical behavior. The code is intended not as a set of "rules" but as a resource for ethical decision-making. It is not — nor can it be under the First Amendment — legally enforceable.

The present version of the code was adopted by the 1996 SPJ National Convention, after months of study and debate among the Society's members. Sigma Delta Chi's first Code of Ethics was borrowed from the American Society of Newspaper Editors in 1926. In 1973, Sigma Delta Chi wrote its own code, which was revised in 1984, 1987 and 1996.